

BEFORE THE FEDERAL ELECTION COMMISSION

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SECRETARIAT

Walt Roberts for Congress
Committee

2001 SEP -7 P 3: 05

Walt Roberts

MUR # 4818
MUR #4933

RESPONSE

In response to the Brief of the General Counsel dated July 11, 2001, ("OGC Brief") recommending that the Commission find probable cause to believe that Walt Roberts ("Roberts") and Walt Roberts for Congress ("WRFC") knowingly and willfully violated the Federal Election Campaign Act of 1971 as amended ("the Act"), 2 U.S.C. § 441a(f), 441f and 432(h), and 2 U.S.C. § 441a(f), 441f, 434(6) and 432(h), respectively submit this Brief for the Commission's consideration.

INTRODUCTION

Walt Roberts was the Democratic candidate for U.S. Congress from the Third District of Oklahoma in 1978 running against the successful Republican candidate, Wes Watkins, who along with all other Republicans members of the Oklahoma delegation to the U.S. House of Representatives and the U.S. Senate signed the original complaining papers which initiated this current investigation.

The General Counsel has based its recommendation on a combination of unsubstantiated media reports, hollow allegations by political opponents and assertions totally unsupported by evidence in the record. It has been admitted that Roberts did violate certain provisions of the Act. However, there is absolutely no evidence that these acts were done either knowingly or willfully by Roberts or WRFC.

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A. APPLICABLE LAW

Candidates for Congress may make unlimited expenditures from their "personal funds." 11 C.F.R. § 110.10(a); see OCG Brief at 3. The Commission's rules define "personal funds" to include:

(1) "Any assets which, . . . at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either (i) Legal and rightful title, or (ii) An equitable interest; . . .

(2) "Salary or other earned income from bona fide employment, . . . and proceeds from the sale of the candidate's . . . investments; . . . gifts of a personal nature which had been customarily received prior to candidacy; . . ."

11 C.F.R. § 110.10(b)(1) & (2).

When a candidate sells assets or renders services, and contributes or loans the proceeds to his or her campaign, the issue in determining whether the funds received in those transactions are "personal" is whether the sale was a sale for fair value of assets actually owned by the candidate or whether the payment for services was bona fide. That a candidate elects to engage in otherwise bona fide transactions during a campaign so that he can use the funds to benefit his candidacy, does not make the funds other than "personal" or their use illegal.

B. ALLEGED ILLEGAL FUNDING OF THE ROBERTS CAMPAIGN

1. Preface:

The Walt Roberts for Congress campaign was not well organized, well funded, or well operated from the beginning right up through the general election. There was constant

confusion and a marked lack of communication between the candidate and campaign workers. Roberts had to rely constantly on the help of volunteers throughout the duration of the campaign.

Roberts personally was not involved in the day-to-day administration of the campaign. He was attempting to raise funds and generally attempting to secure voter support.

Roberts had been assured, early on, that he would receive financial assistance from Washington, D.C. groups if he were victorious in the Democratic Primary Election. Although he did win the Primary, those funds were never provided.

Admittedly, some mistakes were made in the handling of campaign expenses and in reporting to the Commission. However, none of this was done intentionally, knowingly or willfully by Roberts and WRFC.

2. \$35,500 Candidate Loan:

As stated in the General Counsel's Brief, Roberts made a loan from personal funds in April 1998, to the campaign in the amount of \$35,500. Although the responses Roberts submitted in December 1999 were inaccurate, this matter was cleared up by his deposition testimony in January 2001.

In both his testimony and the deposition of Jim Lane, the source of \$20,500 of the money was the sale of a horse trailer by Roberts to Mr. Lane. Together with this testimony, there is the documentary evidence of Mr. Lane's check in the amount and a notation that it was in payment of a trailer. There is no evidence that this was not the case; there is only innuendo and conjecture on the part of the Office of General Counsel.

Roberts testified with specificity as to the source and circumstances of the origin of the remaining \$15,000 that made up the total candidate loan of \$35,500. Roberts received two checks from Jim Smart, each for \$7,500. One of these checks was in payment for art work done by Roberts and the other was for some draft horses and a wagon with other equipment.

3. \$67,500 "Cattle Loan"

Roberts has admitted that he used in his campaign funds entrusted to him by Senator Stipe for the purposes of buying cattle. The testimony was that Roberts felt that it was in the nature of a loan as his intention was to pay the money back before the cattle arrived. This was not possible, as funds which had been expected by the campaign never materialized. Roberts did, however, repay the money from proceeds of the sale of his art work.

Roberts has admitted that he knew it was wrong to deceive Senator Stipe and use his money for a purpose other than Mr. Stipe had intended but he (Roberts) did not know it was a violation of the election laws to use the money in his campaign. He felt that there was no harm since the money was used for only a short time and he repaid the full amount from his personal funds.

4. \$17,000 Candidate Loan

On August 17, 1998, Roberts received a check for \$17,000 from the Stipe Law Firm, deposited it in his auction house bank account and wrote a check from that account to the campaign for that same amount. All of the evidence of which we are aware is that this was in part payment for advertising related services which had been rendered to the firm by

Roberts and that Roberts agreed that he would perform like services in the future which would make up the balance of the \$17,000 as yet unearned.

There is no evidence payment was a campaign contribution or that it was anything but a payment in the normal course of business. A Form 1099 was issued to Roberts by the firm and everything was done openly. It is apparent that Roberts was intending to use the money for his campaign as he was any and all money he could earn or raise from the sale of anything he owned. There is no evidence that Senator Stipe or any other member of the law firm knew that this was his intention or that any members of the firm intended this payment to be a contribution.

5. \$55,00 Unreported Payment

On August 19, 1998, Roberts received a \$70,000 check from Senator Stipe and deposited it in his auction house account. This amount represented two payments pursuant to an agreement between the parties entered into the prior year and requiring Senator Stipe to pay Roberts "at least \$35,000 per year" for a period of ten (10) years. A total of \$55,000 was wired directly from the auction account to two providers of services to the campaign. This amount was a campaign expense but the funds were never deposited in the campaign account and thus the \$55,00 in expenses were never reported as required by the Act.

Roberts testified that he was not aware that the payments had been made directly or that the expenses had not been reported. The evidence has shown that the reports were prepared using the campaign account and this is why the expenses were not reported as they should have been.

This is obviously a case of a lack of communication between the person who caused the bank wires to be sent and the campaign staff which resulted in the failure to report the expenses. This was simply inadvertence and certainly not an attempt to hide anything as all the records were turned over and it can be seen that this was the only instance of any expense not having been reported. Also, none of the witnesses testified that they even knew that this omission had occurred. Admittedly this was a violation, but it was certainly not intentional or willful on anyone's part as no one even knew that it had happened until it was discovered by the Office of General Counsel.

Regarding the option agreement entered by Roberts and Senator Stipe, the OGC again tries to make much more of a thing than it is. Both parties have testified consistently as to the entry into the agreement and that there has arisen a very important difference of opinion as to interpretation of which art it was meant to cover. There is no conflict in the evidence as to when the agreement was signed and the document is dated and can well and clearly speak for itself. The only suggestion that there is anything inappropriate has come by way of accusations by the OGC.

6. Payment of Roberts Personal Expenses by Stipe:

Roberts had known Senator Stipe since Roberts had been a child. They had a long and close, personal political and professional relationship. Senator Stipe had helped Roberts all his life with financial assistance for education as well as money for other personal expenses when Roberts was not employed or in financial distress. That there were few, if any, gifts made in the years immediately preceding 1998 should not be a surprise to anyone. During those years, Roberts was a member of the Oklahoma House of Representatives or otherwise gainfully employed and not in need of such assistance.

7. \$50,000 Loan from MICC:

On September 1, 1998 Roberts made a \$50,000 candidate loan to the campaign using the proceeds of a loan he had made from McAlester Industrial Credit Corporation ("MICC"). This loan was secured by a mortgage on real property owned by Roberts and used in his auction business as well as his personal residence.

Roberts believed this to be perfectly legal and permissible under the Act as evidenced by the report of these facts to the Commission. When notified by the Commission that there was some question about the loan, he sought counsel who made inquiry of the Commission and found that MICC was not a qualified lending institution under the Act. Roberts immediately borrowed the money from a qualified bank (The Bank, N.A.) And repaid MICC.

Neither Roberts nor any one else knew there was a problem with the loan from MICC until told by the Commission. As soon as possible after finding there could be a problem, Roberts sought to and did rectify the situation. It is obvious that there was no intent to violate the Act as it was not even known that there was a potential problem.

8. Art Auction:

On September 11, 1998, Roberts held an art auction in McAlester, OK. This was an attempt to sell works of art which were all exclusively created by Roberts and by him alone. There were no pieces offered for sale by any other artists and none were donated to the campaign or given to Roberts by any other artist or other individual.

Roberts was holding the auction to raise money to repay Senator Stipe the \$67,500 owed as a result of Roberts using funds that were meant to be used for the purchase of

cattle. The auction was conducted in the normal fashion with each item offered going to the highest bidder.

The auction raised a total of \$148,175 and Roberts put this amount in his auction account. These funds were used to pay the sales tax on the proceeds, repay Senator Stipe, order the casting of the sculptures and he loaned \$10,000 of the proceeds to his campaign.

The evidence indicates that the auction was a vehicle to raise money for the candidate personally from assets he had before he became a candidate and therefore perfectly within the candidate's right to convert to cash and apply as he felt necessary including assist in funding his congressional campaign.

9. Reimbursed Contributions:

Roberts acknowledges that certain campaign contributions were improperly reimbursed for contributions made to the campaign as set forth on page 46 of the OGC Brief. Roberts had no knowledge of this reimbursement at the time it occurred or after that until he was advised of it by his counsel prior to his deposition given in January, 2001.

There is no evidence whatsoever that Roberts or anyone within the campaign knew of these reimbursements until Ms. Spears admitted what she had done.

CONCLUSION

A. Admissions:

Roberts for Congress may not have filed the proper form regarding the refinancing of the \$50,000 loan from the Bank, N.A., but all the documents were provided to the Commission long before this investigation began together with an explanation of the

purpose and proceeds of the loan. Therefore, there should be no finding of probable cause to believe that this was a violation of 2 U.S.S. § 434(b).

Roberts and WRFC admit that the \$55,000 bank wire to service providers from Robert's auction account was a violation of 2 U.S.C. § 432(h) for failing to deposit in the campaign account and failing to use that account to pay campaign expenses.

WRFC also admits a violation of § 434(b) by failing to report the receipt and expenditure of these funds.

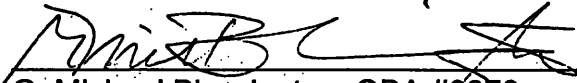
It should be noted as above that these are technically violations but that they were not intentionally, willfully or knowingly committed and therefore there should be no finding of probable cause to believe that Roberts or WRFC knowingly and willfully violated these sections of the Act.

B. Remaining Recommendations:

For the reasons set forth above, the Commission should find that, regarding the other alleged violations, there is no probable cause to believe that either Roberts or WRFC violated the Act and certainly that neither of them did so knowingly or willfully.

Accordingly, the Commission should find that the reporting violations occurred inadvertently and unintentionally and that there were no other violations of the Act by Roberts or WRFC.

Respectfully submitted,


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CERTIFICATE OF MAILING

The undersigned certifies that on this 6th day of September, 2001, a true and correct copy of the above and foregoing was mailed with sufficient postage attached thereon to:

Xavier McDonnell, Esq.
Office of General Counsel
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